

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

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FILE: B-207620.2

DATE: March 16, 1983

MATTER OF: Worldwide Primates, Inc.

DIGEST:

GAO will question sole-source small purchase only when it can be shown that the sole-source determination was unreasonable.

Worldwide Primates, Inc., protests the issuance on a sole-source basis of purchase order No. 263-HD-223005 to Litton Bionetics by the National Institutes of Health to obtain eight rhesus monkeys for biological research. Worldwide contends that it should have been given an opportunity to furnish quotations because it is a qualified source of primates for biological research.

We deny the protest.

This procurement was conducted under the small purchase procedures set out in the Federal Procurement Regulations (FPR) Section III, Part 6. While reasonable competition must generally be obtained in effecting small purchases, there are circumstances that are appropriate for sole-source awards. Security Assistance Forces and Equipment OHG, B-200350, March 18, 1981, 81-1 CPD 212. As in the case of non-small purchase procurements where competition must be maximized (see FPR § 1-3.101(d)), we will not object to a sole-source award unless it is shown that the contracting officer acted without a reasonable basis. See Systems Group Associates, Inc., B-195392, January 17, 1980, 80-1 CPD 56.

At the time NIH issued this purchase order, Worldwide had a contract with NIH to supply its requirements for macaca fascicularis, a primate also used in biological research. However, NIH advises that in many instances the macaca fascicularis cannot be used as a substitute for the rhesus monkey. NIH also states that because of regulations restricting the export of rhesus monkeys from the countries where they reside, rhesus monkeys are becoming increasingly scarce and difficult to obtain.

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Upon learning that Litton Bionetics had eight rhesus monkeys of the sex, size and medical history needed by NIH to resume a particular research project, and that Litton was willing to sell them, NIH issued the purchase order in question without seeking competition. NIH justified this sole-source award on the basis that only rhesus monkeys could fulfill its needs for the research in question; that the primates otherwise satisfied its research criteria; that import restrictions made them difficult to obtain; and that NIH had suspended the research project for over 6 months because it could not obtain rhesus monkeys of this type. NIH also reports that it had several conversations with Worldwide's representatives during this period and that Worldwide indicated that it did not have rhesus monkeys immediately available.

Worldwide has presented no evidence to contradict the agency's statement concerning the limited availability of the rhesus monkeys or that it could furnish them had it been asked for a quotation. It stated that the species it could furnish under its existing contract "can be used on the same basis" as the rhesus, but it has offered no evidence to support this assertion. NIH, on the other hand, points out that baseline data (brain wave patterns, anesthetic criteria, clinical, pathologic and anatomic criteria, response to various chemical compounds, etc.) for the rhesus has been developed through years of research and that other species cannot be substituted for them in most research projects because of the actual or potential differences in that data. In this connection, we note that we will not question an agency's determination of its minimum needs unless there is a clear showing that the determination is unreasonable. Southwest Marine, Inc., B-204136, July 20, 1982, 82-2 CPD 60. There has been no such showing here.

Where the contracting agency justifies a sole-source procurement on the basis that only one source of supply can meet its requirements, the protester must meet the heavy burden of presenting evidence that such action is arbitrary, capricious and an abuse of discretion. Allen and Vickers, Inc., 54 Comp. Gen. 1100 (1975), 75-1 CPD 399; Power Testing, Incorporated, B-197646, July 11, 1980, 80-2 CPD 26. In our view this record adequately establishes a reasonable basis for the sole-source purchase.

The protest is denied.

Milton J. Aorolan
for
Comptroller General
of the United States